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February 5, 2023

By ECF and Email

The Honorable Lewis A. Kaplan
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Daniel Kleeberg et al. v. Lester Eber et al.*, 1:16-cv-09517-LAK-KHP
Defendants' Request for a Mediator

Dear Judge Kaplan,

As I advised by email Friday evening, my clients and I were surprised to see defense counsel's letter because I have heard *nothing* from defense counsel since last Thursday's conference, even though I expressly invited them to do so after the conference.

Mr. Kleeberg directed me to convey his frustration that Wendy has repeatedly contacted him directly, merely to employ scare tactics about the harm to the business that would come from more time passing. In Mr. Kleeberg's view, based on what Wendy continues to say to him, the request for a mediator is just another stall tactic. Given the absence of discussions with counsel, I am inclined to agree with him, especially when combined with Wendy continuing to resort to intimidation rather than any semblance of capitulation.

Therefore, in the event that the Court has managed to set aside time for this case in the near future, my clients would respectfully request that the Court proceed to do so.

Plaintiffs thank the Court for its attention to this matter.

Respectfully submitted,



Brian C. Brook

cc: All counsel of record